



SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

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GOALS

- Familiarize bench and bar with the SSCRA
- Learn the operative provisions of the SSCRA
- Prepare civilian attorneys to represent service members in matters related to the SSCRA



SSCRA OUTLINE

- “A Guide to the Soldiers’ and Sailors’ Civil Relief Act”
 - ➔ <http://www.abanet.org/legal/services/help/preservists/lamphrquick.html>



OVERVIEW

- **History and Background**
- **Organization of the Act**
- **Persons Protected**
- **Substantive Protections**
- **Improvements since the Gulf War**
- **Practice under the Act**



The Ghost of Dean Wigmore

- Civil War versions of Civil Relief Acts
 - ➔ Federal troops protected during conflict
 - ➔ Confederate laws passed in response
- World War I
 - ➔ Professor John Wigmore called to duty
 - ➔ Authored original SSCRA of 1918
 - ➔ Terminated after World War I



The Winds of War Return

- World War II re-enactment of SSCRA
 - ➔ SSCRA of 1940
 - ➔ Hearings of 1942 and major overhaul
 - Enactment of Section 526 interest rate cap
- 1990-91 Gulf War
 - ➔ First major conflict with substantial Guard/Reserve involvement
 - ➔ Some modernization (but not enough)



ORGANIZATION

- 50 U.S.C. App. Sections 501-593
- Article I – General Provisions
 - ➔ Persons protected and jurisdiction
- Article II – General Relief
 - ➔ Default judgments and stays – Sec. 520, 521
 - ➔ Statutes of Limitation – Sec. 525
 - ➔ Maximum rate of interest – Sec. 526



ORGANIZATION (con't.)

- Article III (Sections 530-536)
 - ➔ Major substantive protections against evictions, termination of installment contracts, foreclosure on mortgages and termination of leases by lessees
- Article IV – Life Insurance
- Article V – Taxes and Public Lands
 - ➔ Section 574 – Residence for tax purposes



ORGANIZATION (con't)

- Article VI – Administrative Remedies
 - ➔ Transfers to take advantage of Act – Sec. 580
 - ➔ Certificates of service – Sec. 581
 - ➔ Termination of SSCRA – Sec. 584
- Article VII – Further Relief
 - ➔ Section 590 stay orders
 - ➔ Malpractice insurance – Sec. 592
 - ➔ Self-funded medical insurance coverage – Sec. 593



PERSONS PROTECTED

- All persons on Federal active duty
 - ➔ Army, Navy, Air Force, Marine Corps, Coast Guard
 - ➔ Reserve forces while on active duty
 - ➔ National Guard and Air National Guard in federal status (Title 10 orders)
 - ➔ Inductees into the services
 - ➔ Public Health Service officers detailed for service with Army or Navy and NOAA officers



ADDITIONAL BENEFICIARIES

- Dependents receive protections of Article III provisions (Sec. 536)
 - ➔ Eviction, mortgage foreclosure, termination of leases
- Persons secondarily liable on service members' obligations (Sec. 513)



THE CHALLENGE

- The Act applies to all courts
 - ➔ State, federal, city, county
 - ➔ Big and small
 - ➔ All means all
 - ➔ What about “all” don’t you understand?
 - ➔ No kidding, **THE SSCRA APPLIES TO ALL COURTS**
- “Education” is the key



DEFAULT JUDGMENTS

- Default judgments (Sec. 520)
 - ➔ Theoretically, cannot obtain a default judgment without either an affidavit of non-military service or an attorney appointed
 - ➔ Theory vs. practice
 - ➔ Reopening default judgments
 - May be re-opened any time up to 90 days after release from active duty
 - Must show prejudice and meritorious defense



STAYS OF PROCEEDINGS

- Section 521 Stay of proceedings
 - ➔ Not dependent on nature of claim
 - ➔ Must show material effect
 - ➔ Can be granted *sua sponte*
 - ➔ Must be granted on application if material effect is shown
 - No specific standard for material effect
 - Advocacy is the key
 - ➔ Duration – period of service plus 3 months



CLASH OF THE TITANS

- Re-opening of default judgments
- Section 521 stays
- Mutually exclusive
 - ➔ If knew of pending action, should have requested a stay
 - ➔ If request stay and it is not granted (not materially affected), must have made an appearance and therefore no Section 520 re-opening



STATUTES OF LIMITATION

- Section 525
 - ➔ Statutes of limitation do not run during the period of service
 - For or against the service member
- No requirement that material effect be shown
- Does not apply to IRS time limitations (Sec. 527)



MAXIMUM RATE OF INTEREST

- Section 526
- Added in 1942
- “No obligation or liability bearing interest at a rate in excess of 6%”
- Pre-service debts only
- Must show material effect
- Applies to almost all kinds of obligations and debts that bear interest



“The Shylock, to whom his pound of flesh is dearer than patriotism, is the only man against whom the soldier must be given relief.”

House Military Affairs Subcommittee
Report, 1917



USING SECTION 526

- Material effect
 - ➔ All pay and allowances vs. civilian pay
- Notice to creditors
- Service of copy of orders
- Obligation on creditor who disagrees to go to court for relief
- Does not apply to Federal student loans (but see policy relief currently in effect)



QUESTIONS AND PROBLEMS

- Interest in excess of 6% “vanishes”
- Payments themselves must be re-amortized and lowered
- Does not apply to debts incurred during active duty
 - ➔ Huge problems in communication
- Guarantors also entitled to the reduction (Sec. 513)



EVICTIONS -Sec. 530

- Self-help evictions prohibited
 - ➔ Must have court order to evict
 - ➔ Applies if rent is \$1,200 or less per month
- Court can stay eviction for 3 months (or enter such other order as may be just) if service materially affects ability to pay rent
- Criminal sanctions for violation



INSTALLMENT CONTRACTS - Sec. 531

- Pre-service installment purchase contracts or leases with a view to purchase for either movable or immovable property
- Must have made a payment or deposit
- No termination or repossession without court order
- Court may/shall stay proceedings



MORTGAGE FORECLOSURES - Sec. 532

- Property owned pre-service and at commencement of foreclosure action
- Real and personal property
- Court may/shall stay unless no material effect shown
- No valid foreclosures/seizures without court order during service + 90 days
- Criminal sanctions possible



TERMINATION OF LEASES - Sec. 534

- Applies to all leases of PREMISES executed prior to service
 - ➔ Does not apply to leases of movable
- Use of premises not a factor
 - ➔ Dwellings, agricultural lands, business premises
- Written notice to landlord after commencement of service



SECTION 590 STAYS

- May be the most important general provision in the SSCRA
 - ➔ It means whatever you can convince a court it means; like Chapter 11 plan orders
- Applies during period of service + 6 months – anticipatory action by member
- Relief may be granted in a variety of ways, much like a Chapter 11 plan



OPTIONS IN A 590 STAY

- Contract for purchase of real property
 - ➔ Court can stay enforcement of obligation during military service plus period equal to period of military service plus remaining period of obligation
- Any other obligation
 - ➔ Court can stay enforcement of obligation during military service plus period equal to period of service
- Deferred payments must be paid over the “extension period”, plus new payments as they accrue



CANCELLATION OF LEASES OF MOVABLES?

- Section 590 stay applications
- Notice to creditors of problems
- Application to court for stay
 - ➔ Notice and hearing
 - ➔ Must show material effect
- Duration of stays under Section 590



ADDITIONS FROM 1991

- Malpractice insurance protections for health care providers and attorneys (Section 592)
 - ➔ Claims made policies
 - ➔ Suspends policy; no premiums owed during suspension
- Self-sponsored health insurance plans



NON-DISCRIMINATION REQUIREMENT

- Section 518
- Claiming SSCRA rights cannot be the basis for certain adverse credit reporting actions
- Enforcement is under FCRA
 - ➔ 15 U.S.C. 1681n. – willful noncompliance
 - ➔ 15 U.S.C. 1681o. – negligent noncompliance



SSCRA IN PRACTICE

- *Cathey v. BancorpSouth Bank*
 - ➔ Private right of action affirmed
 - ➔ Sec. 526 applies to corporate debt if the service member is personally liable
 - ➔ Summary judgment granted; damage trial pending
- Navy E-7 corpsman
 - ➔ Success story based on *Cathey*



CITATIONS

- *Cathey v. First Republic Bank*, 2001 U.S. Dist. LEXIS 13150
- www.bankersonline.com/lending/cathey/case.html
- www.roa.org/callup/cathey.pdf
- www.jagcnet.army.mil/TJAGSA
 - ➔ click on "Publications"
 - ➔ scroll down to "Legal Assistance" and click on JA 260



SUMMARY

- SSCRA provides protections for citizens called to military duty
- Provides for suspension of certain civil liabilities during the period of service
- SSCRA requires education for bench and bar – it really means what it says
- SSCRA designed to protect military members and their dependents